

HOUSE BILL NO. 632

INTRODUCED BY T. SMITH, B. MITCHELL, L. BREWSTER, B. LER, B. PHALEN

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO INVESTIGATIONS OF REPORTS OF CHILD ABUSE AND NEGLECT; AMENDING THE DEFINITION OF "PSYCHOLOGICAL ABUSE OR NEGLECT"; ALLOWING THE DEPARTMENT TO INVESTIGATE A PARENT, GUARDIAN, OR OTHER PERSON HAVING PHYSICAL OR LEGAL CUSTODY OF A CHILD IF THAT PERSON FILES REPEATED FALSE REPORTS OF CHILD ABUSE OR NEGLECT OF THE CHILD; AND AMENDING SECTIONS 41-3-102, 41-3-201, AND 41-3-202, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 41-3-102, MCA, is amended to read:

"41-3-102. Definitions. As used in this chapter, the following definitions apply:

(1) (a) "Abandon", "abandoned", and "abandonment" mean:

(i) leaving a child under circumstances that make reasonable the belief that the parent does not intend to resume care of the child in the future;

(ii) willfully surrendering physical custody for a period of 6 months and during that period not manifesting to the child and the person having physical custody of the child a firm intention to resume physical custody or to make permanent legal arrangements for the care of the child;

(iii) that the parent is unknown and has been unknown for a period of 90 days and that reasonable efforts to identify and locate the parent have failed; or

(iv) the voluntary surrender, as defined in 40-6-402, by a parent of a newborn who is no more than 30 days old to an emergency services provider, as defined in 40-6-402.

(b) The terms do not include the voluntary surrender of a child to the department solely because of parental inability to access publicly funded services.

(2) "A person responsible for a child's welfare" means:

(a) the child's parent, guardian, or foster parent or an adult who resides in the same home in which

1 the child resides;

2 (b) a person providing care in a day-care facility;

3 (c) an employee of a public or private residential institution, facility, home, or agency; or

4 (d) any other person responsible for the child's welfare in a residential setting.

5 (3) "Abused or neglected" means the state or condition of a child who has suffered child abuse or
6 neglect.

7 (4) (a) "Adequate health care" means any medical care or nonmedical remedial health care
8 recognized by an insurer licensed to provide disability insurance under Title 33, including the prevention of the
9 withholding of medically indicated treatment or medically indicated psychological care permitted or authorized
10 under state law.

11 (b) This chapter may not be construed to require or justify a finding of child abuse or neglect for the
12 sole reason that a parent or legal guardian, because of religious beliefs, does not provide adequate health care
13 for a child. However, this chapter may not be construed to limit the administrative or judicial authority of the
14 state to ensure that medical care is provided to the child when there is imminent substantial risk of serious harm
15 to the child.

16 (5) "Best interests of the child" means the physical, mental, and psychological conditions and
17 needs of the child and any other factor considered by the court to be relevant to the child.

18 (6) "Child" or "youth" means any person under 18 years of age.

19 (7) (a) "Child abuse or neglect" means:

20 (i) actual physical or psychological harm to a child;

21 (ii) substantial risk of physical or psychological harm to a child; or

22 (iii) abandonment.

23 (b) (i) The term includes:

24 (A) actual physical or psychological harm to a child or substantial risk of physical or psychological
25 harm to a child by the acts or omissions of a person responsible for the child's welfare;

26 (B) exposing a child to the criminal distribution of dangerous drugs, as prohibited by 45-9-101, the
27 criminal production or manufacture of dangerous drugs, as prohibited by 45-9-110, or the operation of an
28 unlawful clandestine laboratory, as prohibited by 45-9-132; or

1 (C) any form of child sex trafficking or human trafficking.

2 (ii) For the purposes of this subsection (7), "dangerous drugs" means the compounds and
3 substances described as dangerous drugs in Schedules I through IV in Title 50, chapter 32, part 2.

4 (c) In proceedings under this chapter in which the federal Indian Child Welfare Act is applicable,
5 this term has the same meaning as "serious emotional or physical damage to the child" as used in 25 U.S.C.
6 1912(f).

7 (d) The term does not include self-defense, defense of others, or action taken to prevent the child
8 from self-harm that does not constitute physical or psychological harm to a child.

9 (8) "Child protection specialist" means an employee of the department who investigates allegations
10 of child abuse, neglect, and endangerment and has been certified pursuant to 41-3-127.

11 (9) "Concurrent planning" means to work toward reunification of the child with the family while at
12 the same time developing and implementing an alternative permanent plan.

13 (10) "Department" means the department of public health and human services provided for in 2-15-
14 2201.

15 (11) "Family engagement meeting" means a meeting that involves family members in either
16 developing treatment plans or making placement decisions, or both.

17 (12) "Indian child" means any unmarried person who is under 18 years of age and who is either:

18 (a) a member of an Indian tribe; or

19 (b) eligible for membership in an Indian tribe and is the biological child of a member of an Indian
20 tribe.

21 (13) "Indian child's tribe" means:

22 (a) the Indian tribe in which an Indian child is a member or eligible for membership; or

23 (b) in the case of an Indian child who is a member of or eligible for membership in more than one
24 Indian tribe, the Indian tribe with which the Indian child has the more significant contacts.

25 (14) "Indian custodian" means any Indian person who has legal custody of an Indian child under
26 tribal law or custom or under state law or to whom temporary physical care, custody, and control have been
27 transferred by the child's parent.

28 (15) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of

1 Indians recognized by:

2 (a) the state of Montana; or

3 (b) the United States secretary of the interior as being eligible for the services provided to Indians
4 or because of the group's status as Indians, including any Alaskan native village as defined in federal law.

5 (16) "Limited emancipation" means a status conferred on a youth by a court in accordance with 41-
6 1-503 under which the youth is entitled to exercise some but not all of the rights and responsibilities of a person
7 who is 18 years of age or older.

8 (17) "Parent" means a biological or adoptive parent or stepparent.

9 (18) "Parent-child legal relationship" means the legal relationship that exists between a child and the
10 child's birth or adoptive parents, as provided in Title 40, chapter 6, part 2, unless the relationship has been
11 terminated by competent judicial decree as provided in 40-6-234, Title 42, or part 6 of this chapter.

12 (19) "Permanent placement" means reunification of the child with the child's parent, adoption,
13 placement with a legal guardian, placement with a fit and willing relative, or placement in another planned
14 permanent living arrangement until the child reaches 18 years of age.

15 (20) "Physical abuse" means an intentional act, an intentional omission, or gross negligence
16 resulting in substantial skin bruising, internal bleeding, substantial injury to skin, subdural hematoma, burns,
17 bone fractures, extreme pain, permanent or temporary disfigurement, impairment of any bodily organ or
18 function, or death.

19 (21) "Physical neglect" means either failure to provide basic necessities, including but not limited to
20 appropriate and adequate nutrition, protective shelter from the elements, and appropriate clothing related to
21 weather conditions, or failure to provide cleanliness and general supervision, or both, or exposing or allowing
22 the child to be exposed to an unreasonable physical or psychological risk to the child.

23 (22) (a) "Physical or psychological harm to a child" means the harm that occurs whenever the
24 parent or other person responsible for the child's welfare:

25 (i) inflicts or allows to be inflicted upon the child physical abuse, physical neglect, or psychological
26 abuse or neglect;

27 (ii) commits or allows sexual abuse or exploitation of the child;

28 (iii) induces or attempts to induce a child to give untrue testimony that the child or another child

1 was abused or neglected by a parent or other person responsible for the child's welfare;

2 (iv) causes malnutrition or a failure to thrive or otherwise fails to supply the child with adequate
3 food or fails to supply clothing, shelter, education, or adequate health care, though financially able to do so or
4 offered financial or other reasonable means to do so;

5 (v) exposes or allows the child to be exposed to an unreasonable risk to the child's health or
6 welfare by failing to intervene or eliminate the risk; or

7 (vi) abandons the child; or

8 (vii) repeatedly reports false allegations of child abuse and neglect to the department against
9 another parent or other person responsible for the child's welfare.

10 (b) The term does not include a youth not receiving supervision solely because of parental inability
11 to control the youth's behavior.

12 (23) (a) "Protective services" means services provided by the department:

13 (i) to enable a child alleged to have been abused or neglected to remain safely in the home;

14 (ii) to enable a child alleged to have been abused or neglected who has been removed from the
15 home to safely return to the home; or

16 (iii) to achieve permanency for a child adjudicated as a youth in need of care when circumstances
17 and the best interests of the child prevent reunification with parents or a return to the home.

18 (b) The term includes emergency protective services provided pursuant to 41-3-301, written
19 prevention plans provided pursuant to 41-3-302, and court-ordered protective services provided pursuant to
20 parts 4 and 6 of this chapter.

21 (24) (a) "Psychological abuse or neglect" means severe maltreatment through acts or omissions
22 that are injurious to the child's emotional, intellectual, or psychological capacity to function, including the
23 commission of acts of violence against another person residing in the child's home.

24 (b) The term may not be construed to hold a victim responsible for failing to prevent the crime
25 against the victim.

26 (25) "Qualified expert witness" as used in cases involving an Indian child in proceedings subject to
27 the federal Indian Child Welfare Act means:

28 (a) a member of the Indian child's tribe who is recognized by the tribal community as

- 1 knowledgeable in tribal customs as they pertain to family organization and child-rearing practices;
- 2 (b) a lay expert witness who has substantial experience in the delivery of child and family services
- 3 to Indians and extensive knowledge of prevailing social and cultural standards and child-rearing practices within
- 4 the Indian child's tribe; or
- 5 (c) a professional person who has substantial education and experience in providing services to
- 6 children and families and who possesses significant knowledge of and experience with Indian culture, family
- 7 structure, and child-rearing practices in general.
- 8 (26) "Qualified individual" means a trained professional or licensed clinician who:
- 9 (a) has expertise in the therapeutic needs assessment used for placement of youth in a
- 10 therapeutic group home;
- 11 (b) is not an employee of the department; and
- 12 (c) is not connected to or affiliated with any placement setting in which children are placed.
- 13 (27) "Reasonable cause to suspect" means cause that would lead a reasonable person to believe
- 14 that child abuse or neglect may have occurred or is occurring, based on all the facts and circumstances known
- 15 to the person.
- 16 (28) "Residential setting" means an out-of-home placement where the child typically resides for
- 17 longer than 30 days for the purpose of receiving food, shelter, security, guidance, and, if necessary, treatment.
- 18 (29) "Safety and risk assessment" means an evaluation by a child protection specialist following an
- 19 initial report of child abuse or neglect to assess the following:
- 20 (a) the existing threat or threats to the child's safety;
- 21 (b) the protective capabilities of the parent or guardian;
- 22 (c) any particular vulnerabilities of the child;
- 23 (d) any interventions required to protect the child; and
- 24 (e) the likelihood of future physical or psychological harm to the child.
- 25 (30) (a) "Sexual abuse" means the commission of sexual assault, sexual intercourse without
- 26 consent, aggravated sexual intercourse without consent, indecent exposure, sexual abuse, ritual abuse of a
- 27 minor, or incest, as described in Title 45, chapter 5.
- 28 (b) Sexual abuse does not include any necessary touching of an infant's or toddler's genital area

1 while attending to the sanitary or health care needs of that infant or toddler by a parent or other person
2 responsible for the child's welfare.

3 (31) "Sexual exploitation" means:

4 (a) allowing, permitting, or encouraging a child to engage in a prostitution offense, as described in
5 45-5-601 through 45-5-603;

6 (b) allowing, permitting, or encouraging sexual abuse of children as described in 45-5-625; or

7 (c) allowing, permitting, or encouraging sexual servitude as described in 45-5-704 or 45-5-705.

8 (32) "Therapeutic needs assessment" means an assessment performed by a qualified individual
9 within 30 days of placement of a child in a therapeutic group home that:

10 (a) assesses the strengths and needs of the child using an age-appropriate, evidence-based,
11 validated, functional assessment tool;

12 (b) determines whether the needs of the child can be met with family members or through
13 placement in a youth foster home or, if not, which appropriate setting would provide the most effective and
14 appropriate level of care for the child in the least restrictive environment and be consistent with the short-term
15 and long-term goals for the child as specified in the child's permanency plan; and

16 (c) develops a list of child-specific short-term and long-term mental and behavioral health goals.

17 (33) "Treatment plan" means a written agreement between the department and the parent or
18 guardian or a court order that includes action that must be taken to resolve the condition or conduct of the
19 parent or guardian that resulted in the need for protective services for the child. The treatment plan may involve
20 court services, the department, and other parties, if necessary, for protective services.

21 (34) (a) "Withholding of medically indicated treatment" means the failure to respond to an infant's
22 life-threatening conditions by providing treatment, including appropriate nutrition, hydration, and medication,
23 that, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in
24 ameliorating or correcting the conditions.

25 (b) The term does not include the failure to provide treatment, other than appropriate nutrition,
26 hydration, or medication, to an infant when, in the treating physician's or physicians' reasonable medical
27 judgment:

28 (i) the infant is chronically and irreversibly comatose;

- 1 (ii) the provision of treatment would:
- 2 (A) merely prolong dying;
- 3 (B) not be effective in ameliorating or correcting all of the infant's life-threatening conditions; or
- 4 (C) otherwise be futile in terms of the survival of the infant; or
- 5 (iii) the provision of treatment would be virtually futile in terms of the survival of the infant and the
- 6 treatment itself under the circumstances would be inhumane. For purposes of this subsection (34), "infant"
- 7 means an infant less than 1 year of age or an infant 1 year of age or older who has been continuously
- 8 hospitalized since birth, who was born extremely prematurely, or who has a long-term disability. The reference
- 9 to less than 1 year of age may not be construed to imply that treatment should be changed or discontinued
- 10 when an infant reaches 1 year of age or to affect or limit any existing protections available under state laws
- 11 regarding medical neglect of children 1 year of age or older.

12 (35) "Youth in need of care" means a youth who has been adjudicated or determined, after a

13 hearing, to be or to have been abused, neglected, or abandoned."

14

15 **Section 2.** Section 41-3-201, MCA, is amended to read:

16 **"41-3-201. Reports.** (1) When the professionals and officials listed in subsection (2) know or have

17 reasonable cause to suspect, as a result of information they receive in their professional or official capacity, that

18 a child is physically or psychologically abused or neglected by anyone regardless of whether the person

19 suspected of causing the abuse or neglect is a parent or other person responsible for the child's welfare, they

20 shall report the matter promptly to the department of public health and human services.

21 (2) Professionals and officials required to report are:

- 22 (a) a physician, resident, intern, or member of a hospital's staff engaged in the admission,
- 23 examination, care, or treatment of persons;
- 24 (b) a nurse, osteopath, chiropractor, podiatrist, medical examiner, coroner, dentist, optometrist, or
- 25 any other health or mental health professional;
- 26 (c) religious healers;
- 27 (d) school teachers, other school officials, and employees who work during regular school hours;
- 28 (e) a social worker licensed pursuant to Title 37, child protection specialist, operator or employee

1 of any registered or licensed day-care or substitute care facility, staff of a resource and referral grant program
2 organized under 52-2-711 or of a child and adult food care program, or an operator or employee of a child-care
3 facility;

4 (f) a foster care, residential, or institutional worker;

5 (g) a peace officer or other law enforcement official;

6 (h) a member of the clergy, as defined in 15-6-201(2)(b);

7 (i) a guardian ad litem or a court-appointed advocate who is authorized to investigate a report of
8 alleged abuse or neglect;

9 (j) an employee of an entity that contracts with the department to provide direct services to
10 children; and

11 (k) an employee of the department while in conduct of the employee's duties.

12 (3) A professional listed in subsection (2)(a) or (2)(b) involved in the delivery or care of an infant
13 shall report to the department any infant known to the professional to be affected by a dangerous drug, as
14 defined in 50-32-101.

15 (4) Any person may make a report under this section if the person knows or has reasonable cause
16 to suspect that a child is abused or neglected.

17 (5) (a) When a professional or official required to report under subsection (2) makes a report, the
18 department:

19 (i) may share information with:

20 (A) that professional or official; or

21 (B) other individuals with whom the professional or official works in an official capacity if the
22 individuals are part of a team that responds to matters involving the child or the person about whom the report
23 was made and the professional or official has asked that the information be shared with the individuals; and

24 (ii) shall share information with the individuals listed in subsections (5)(a)(i)(A) and (5)(a)(i)(B) on
25 specific request. Information shared pursuant to this subsection (5)(a)(ii) may be limited to the outcome of the
26 investigation and any subsequent action that will be taken on behalf of the child who is the subject of the report.

27 (b) The department may provide information in accordance with 41-3-202~~(8)~~(9) and also share
28 information about the investigation, limited to its outcome and any subsequent action that will be taken on

1 behalf of the child who is the subject of the report.

2 (c) Individuals who receive information pursuant to this subsection (5) shall maintain the
3 confidentiality of the information as required by 41-3-205.

4 (6) (a) Except as provided in subsection (6)(b) or (6)(c), a person listed in subsection (2) may not
5 refuse to make a report as required in this section on the grounds of a physician-patient or similar privilege.

6 (b) A member of the clergy or a priest is not required to make a report under this section if:

7 (i) the knowledge or suspicion of the abuse or neglect came from a statement or confession made
8 to the member of the clergy or the priest in that person's capacity as a member of the clergy or as a priest;

9 (ii) the statement was intended to be a part of a confidential communication between the member
10 of the clergy or the priest and a member of the church or congregation; and

11 (iii) the person who made the statement or confession does not consent to the disclosure by the
12 member of the clergy or the priest.

13 (c) A member of the clergy or a priest is not required to make a report under this section if the
14 communication is required to be confidential by canon law, church doctrine, or established church practice.

15 (7) The reports referred to under this section must contain:

16 (a) the names and addresses of the child and the child's parents or other persons responsible for
17 the child's care;

18 (b) to the extent known, the child's age and the nature and extent of the child's injuries, including
19 any evidence of previous injuries;

20 (c) any other information that the maker of the report believes might be helpful in establishing the
21 cause of the injuries or showing the willful neglect and the identity of the person or persons responsible for the
22 injury or neglect; and

23 (d) the facts that led the person reporting to believe that the child has suffered injury or injuries or
24 willful neglect, within the meaning of this chapter."

25

26 **Section 3.** Section 41-3-202, MCA, is amended to read:

27 **"41-3-202. Action on reporting.** (1) (a) Upon receipt of a report that a child is or has been abused or
28 neglected, the department shall promptly assess the information contained in the report and make a

1 determination regarding the level of response required and the timeframe within which action must be initiated.

2 (b) (i) Except as provided in subsection (1)(b)(ii), upon receipt of a report that includes an
3 allegation of sexual abuse or sexual exploitation when the alleged perpetrator of the sexual abuse or sexual
4 exploitation was 12 years of age or older or if the department determines during any investigation that the
5 circumstances surrounding an allegation of child abuse or neglect include an allegation of sexual abuse or
6 sexual exploitation when the alleged perpetrator of the sexual abuse or sexual exploitation was 12 years of age
7 or older, the department shall immediately report the allegation to the county attorney of the county in which the
8 acts that are the subject of the report occurred.

9 (ii) If a victim of sexual abuse or sexual exploitation has attained the age of 14 and has sought
10 services from a contractor as described in 41-3-201(2)(j) that provides confidential services to victims of sexual
11 assault, conditioned upon an understanding that the criminal conduct will not be reported by the department to
12 the county attorney in the jurisdiction in which the alleged crime occurred, the department may not report
13 pursuant to 41-3-205(5)(d) and subsection (1)(b)(i) of this section.

14 (c) If the department determines that an investigation and a safety and risk assessment are
15 required, a child protection specialist shall promptly conduct a thorough investigation into the circumstances
16 surrounding the allegations of abuse or neglect of the child and perform a safety and risk assessment to
17 determine whether the living arrangement presents an unsafe environment for the child. The safety and risk
18 assessment may include an investigation at the home of the child involved, the child's school or day-care
19 facility, or any other place where the child is present and into all other nonfinancial matters that in the discretion
20 of the investigator are relevant to the safety and risk assessment. In conducting a safety and risk assessment
21 under this section, a child protection specialist may not inquire into the financial status of the child's family or of
22 any other person responsible for the child's care, except as necessary to ascertain eligibility for state or federal
23 assistance programs or to comply with the provisions of 41-3-446.

24 (2) An initial investigation of alleged abuse or neglect may be conducted when an anonymous
25 report is received. However, if the initial investigation does not within 48 hours result in the development of
26 independent, corroborative, and attributable information indicating that there exists a current risk of physical or
27 psychological harm to the child, a child may not be removed from the living arrangement. If independent,
28 corroborative, and attributable information indicating an ongoing risk results from the initial investigation, the

1 department shall then conduct a safety and risk assessment.

2 (3) If a parent or guardian reports more than five times to the department that the child of the
3 parent or guardian is or has been abused or neglected by another parent or guardian of the child and the prior
4 investigations and safety and risk assessments of the other parent or guardian did not provide reasonable
5 cause to suspect that the child was suffering from abuse or neglect, the department may investigate and
6 conduct a safety and risk assessment of the reporting parent or guardian based on allegations of psychological
7 abuse.

8 ~~(3)~~(4) The child protection specialist is responsible for conducting the safety and risk assessment. If
9 the child is treated at a medical facility, the child protection specialist, county attorney, or peace officer,
10 consistent with reasonable medical practice, has the right of access to the child for interviews, photographs,
11 and securing physical evidence and has the right of access to relevant hospital and medical records pertaining
12 to the child. If an interview of the child is considered necessary, the child protection specialist, county attorney,
13 or peace officer may conduct an interview of the child. The interview may be conducted in the presence of the
14 parent or guardian or an employee of the school or day-care facility attended by the child.

15 ~~(4)~~(5) Subject to 41-3-205(3), if the child's interview is audiotaped or videotaped, an unedited
16 audiotape or videotape with audio track must be made available, upon request, for unencumbered review by
17 the family.

18 ~~(5)~~(6) (a) If from the safety and risk assessment the department has reasonable cause to suspect that
19 the child is suffering abuse or neglect, the department may provide emergency protective services to the child,
20 pursuant to 41-3-301, or enter into a written prevention plan, pursuant to 41-3-302, and may provide protective
21 services to any other child under the same care. The department shall:

22 (i) after interviewing the parent or guardian, if reasonably available, document the determinations
23 of the safety and risk assessment; and

24 (ii) notify the child's family of the determinations of the safety and risk assessment, unless the
25 notification can reasonably be expected to result in harm to the child or other person.

26 (b) Except as provided in subsection ~~(5)~~(e) ~~(6)~~(c), the department shall destroy all safety and risk
27 assessment determinations and associated records, except for medical records, within 30 days after the end of
28 the 3-year period starting from the date of completion of the safety and risk assessment.

1 (c) Safety and risk assessment determinations and associated records may be maintained for a
2 reasonable time as defined by department rule under the following circumstances:

3 (i) the safety and risk assessment determines that abuse or neglect occurred;

4 (ii) there had been a previous or there is a subsequent report and investigation resulting in a
5 safety and risk assessment concerning the same person; or

6 (iii) an order has been issued by a court of competent jurisdiction adjudicating the child as a youth
7 in need of care based on the circumstances surrounding the initial allegations.

8 ~~(6)(7)~~ The investigating child protection specialist, within 60 days of commencing an investigation,
9 shall also furnish a written safety and risk assessment to the department and, upon request, to the family.

10 Subject to time periods set forth in subsections ~~(5)(b) and (5)(c)~~ (6)(b) and (6)(c), the department shall maintain
11 a record system documenting investigations and safety and risk assessment determinations. Unless records
12 are required to be destroyed under subsections ~~(5)(b) and (5)(c)~~ (6)(b) and (6)(c), the department shall retain
13 records relating to the safety and risk assessment, including case notes, correspondence, evaluations,
14 videotapes, and interviews, for 25 years.

15 ~~(7)(8)~~ Any person reporting abuse or neglect that involves acts or omissions on the part of a public or
16 private residential institution, home, facility, or agency is responsible for ensuring that the report is made to the
17 department.

18 ~~(8)(9)~~ The department shall, upon request from any reporter of alleged child abuse or neglect, verify
19 whether the report has been received, describe the level of response and timeframe for action that the
20 department has assigned to the report, and confirm that it is being acted upon."

21 - END -